IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2075 OF 2005

IN

FIRST APPEAL NO.2031 OF 2005

Sebian Co-operative Housing
Society Ltd. ..Appellant.

Vs.

Bandra Olar Co-op.Housing
Society Ltd. & Ors. ..Respondents.

....

Mr.L.M.Acharya for the Appellant.

Mr.S.P.Ghaste for Respondent No.1.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

8th December, 2005.

P.C. :

It is common ground that though the City Civil Court decreed the suit on 9th February, 2005 setting aside the action of the Municipal Corporation in demolishing the wall and permitting

the original Plaintiffs to reconstruct a portion of the compound wall which had been demolished, that order was stayed. On 6th April, 2005, the Roznama shows that the learned advocate for the Plaintiffs was present and the stay was extended for a period of two weeks. On 20th April, 2005 a Learned Single Judge of this Court (Hon'ble Mrs. Justice Ranjana Desai) was moved for urgent orders and till 21st April, 2005 ad interim relief was granted in terms of prayer clauses (a) and (b) to the Civil Application, staying the judgment of the City Civil Court and injuncting the original Plaintiffs from constructing the wall. Despite this, the wall was constructed on 20th April, 2005. On 21st April, 2005, the Learned Single Judge noted these facts as also the submission of the original Plaintiffs that the order of this Court dated 20th April, 2005 was served at 6 p.m. on the same day and that the wall was reconstructed in the meantime. The Learned Judge observed that even if this statement on the part of the Plaintiff was correct, on 20th April, 2005 the order passed by the City Civil Court granting stay of the operation of the judgment of the Trial Court was in operation. In the circumstances a notice was directed to be issued

under the provisions of the Contempt of Courts Act, 1971 to the Original Plaintiffs to explain as to why action be not adopted.

At the hearing of this Civil Application, it was urged on behalf of the original Plaintiffs that the construction of the wall was carried out on the morning on 20th April, 2005 on the foundation that the order of the City Civil Court granting stay was not in operation. However, it has been fairly conceded before the Court that this was erroneous and that the order of stay passed by the City Civil Court continued to hold the field when the wall was reconstructed. Even at this stage, an opportunity was given by me to the First Respondent, the Original Plaintiff to purge the contempt by removing the wall which was put up in defiance of the order of the City Civil Court and in possible violation of the orders passed by this Court as well. Counsel appearing for the First Respondent is not ready and to advice his clients to do so. On behalf of the First Respondent it has been asserted that the Appellant had no reason not to appear before the City Civil Court when the suit was tried. That is a matter which will be

considered at the hearing of the First Appeal. At this stage, in so far as these proceedings before the Court are concerned, what is to be noted is that in defiance of the order of stay which held the field on 20th April, 2005, the wall was unlawfully constructed. Such conduct on the part of a litigant in acting in a brazen violation of the order of the Court cannot be countenanced. Accordingly, the Civil Application is made absolute in terms of prayer clauses (a) and (c).

In so far as the notice issued by this Court, calling upon the First Respondent to show cause as to why action should not be adopted under the Contempt of Courts Act, 1971 is concerned, I am of the view that the explanation on the part of the First Respondent cannot be accepted. Even at this stage, there is no inclination to tender an apology or to purge the contempt. Hence, rule issued on the contempt proceedings, returnable after four weeks.